

REMARKS

Claims 1-20 are pending. Claims 1, 7, 10, 11, and 17 are currently amended. Claims 21-35 were canceled by the Examiner in response to a restriction requirement imposed by the Examiner under 37 C.F.R. § 1.142. Applicant disagrees that claims 21-35 constituted a “serious” search burden on the Examiner as required by MPEP 803 to justify a restriction. Nevertheless, Applicant has canceled claims 21-35 and has added new dependent claims 36-47 and claims 48-50 directed to subject matter previously presented. No new matter has been introduced by way of this amendment.

As an initial matter, Applicant respectfully submits that the Office Action dated May 31, 2005 was improperly made final because the Examiner has cited the same reference yet still failed to discuss how the cited art meets all the elements recited in the claims. For example, the Examiner fails to identify any device in the cited art corresponding to the recited “second computing device” in claim 1 (before and after amendment). *See* 37 CFR § 1.113 (“In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.”); MPEP § 707.07(d) (“When a claim is refused for any reason relating to the merits thereof it should be ‘rejected’ and the ground of rejection fully and clearly stated.”)

In addition, the Examiner has reinterpreted the previously cited reference, U.S. Patent No. 6,788,890 issued to Johnson, et al. (hereinafter “Johnson”) in a fundamentally different way not caused by any amendment made by Applicant. In the first Office Action issued on October 18, 2004, the Examiner made no reference to the “intelligent actuator” of Johnson as the recited first computing device, and appeared instead to (incorrectly) suggest the “native configurator” was the recited first computing device. In the present Office Action, the Examiner contends for the first time that the “intelligent actuator” is the claimed first computing device. Thus, the present Office Action should not have been made final. *See* MPEP § 706.07 (“Before final rejection is in order a clear issue should be developed between the examiner and applicant.”).

Accordingly, Applicant respectfully submits the rejection was improperly made final. In the event the Examiner finds the Application is not in a condition for allowance after

considering this Response, Applicant respectfully requests that the Examiner withdraw the finality of the current Office Action and schedule an interview with the Applicant to discuss the allowability of the claims over the cited references.

Turning to the merits, the Examiner rejected claims 1-20 under 35 U.S.C. § 102(a) as anticipated by Johnson. Applicant respectfully traverses the Examiner's rejections.

Independent claims 1, and 11, before and after amendment, recite, "a first computing device configured to: ... selectively initiate execution of a software application by: the first computing device when a state of at least one of the first computing device and a second computing device is a first state; and the second computing device ... when the state is a second state, the software application being associable with one or more software objects" (or similar language). Claims 7 and 17, before and after amendment, recite, "a first computing device configured to: ... selectively initiate execution of the software object by: the first computing device if when a state of at least one of the first computing device and a second computing device is a first state; and the second computing device if when the state is a second state" (or similar language). As an initial matter, the Examiner has failed to address all of the elements recited in the independent claims. The Examiner identifies an intelligent actuator (*e.g.*, the valves illustrated in Figure 1 as controlling the inlets and outlets 24-28 and 34, and the field device 62 illustrated in Figure 2) as the recited first computing device and the configuration editor as the recited software application. The Examiner wholly fails to identify anything in Johnson that corresponds to the recited "second computing device," points to no discussion in Johnson of an intelligent actuator initiating execution of the configuration editor, either by itself or by a second computing device, or of the configuration editor being associable with one or more software objects.

Further, the Examiner's interpretation of Johnson is inoperable. The Examiner points to the summary of the invention, which describes an intelligent actuator and a configuration editor. In Johnson, the configuration editor may be enabled in some embodiments and disabled in others. See Johnson, column 3, line 52 through column 4, line 3. The Examiner equates this to the recited first and second states. According to the Examiner, in the first state the configuration editor is disabled and in the second state the configuration editor is enabled. If in

the first state the configuration editor is disabled, it is not then possible for the intelligent actuator to initiate its execution as recited by Applicant's claims. Thus, Johnson does not teach or suggest "a first computing device configured to: selectively initiate execution of a software application by: the first computing device when a state of at least one of the first computing device and a second computing device is a first state," as recited.

Dependent claims 2-6, 8-10, 12-16 and 18-20 also are not taught, motivated or suggested at least for the same reasons as their respective independent claims. In addition, these claims are not taught, motivated or suggested by Johnson for further reasons. For example, dependent claims 3, 9, 13 and 19 recite, "the state is a synchronized state of at least the first and second computing devices." The Examiner points to Johnson at Column 9, lines 42-63, which merely recites that "redundancy can be implemented [with] transaction based synchronization." There is no teaching or suggestion in the cited portion of Johnson of any computing device using a synchronized state of itself and a second computing device to selectively initiate execution of a software application by itself or the second computing device. Thus, dependent claims 3, 9, 13 and 19 are not anticipated by Johnson for the additional reason that Johnson does not teach or suggest "the state is a synchronized state of at least the first and second computing devices," as recited.

Dependent claims 4 and 14 recite, "wherein the state includes information for identifying a group of software applications executed by the first and second computing devices." The Examiner points to Column 12, lines 6-20. The cited portion of Johnson merely addresses on-line upgrading of software applications. There is no indication that state information includes "information for identifying a group of software applications," as recited. Thus, Johnson does not anticipate claims 4 and 14 for this additional reason.

Dependent claims 5 and 15 recite, "wherein the state indicates whether the software application has an associated listening socket." The Examiner points to Column 6, lines 38-39 and Column 22, lines 56-67. The cited portions of Johnson merely indicate that the enterprise server 52 runs Java code and that devices may register to receive certain types of information. There is no suggestion in either cited portion that the subscriber facility uses "an associated listening *socket*" or that this information is part of the state information that is used by

a first computing device to selectively initiate execution of a software application by one of itself or a second computing device. Accordingly, dependent claims 5 and 15 are not anticipated by Johnson for the additional reason that Johnson does not teach or suggest “wherein the state indicates whether the software application has an associated listening socket,” as recited.

Dependent claims 6 recites, “the software application is a first software application, and wherein the first computing device is configured to, in response to execution of the first software application and the state, selectively initiating execution of a second software application by the second computing device.” Dependent claim 16 contains similar language. The Examiner points to the description of the intelligent actuator and configuration editor discussed above with regard to the independent claims. Presumably, the Examiner contends that the intelligent actuator is the first computing device and a field device is the second computing device. However, Johnson only mentions the intelligent actuator as *configuring* a native device. Johnson does not indicate or suggest that intelligent actuator initiates execution of any *software application* by the “field device,” let alone initiation of *a second software application* in response to execution of a first software application and a state of either the intelligent actuator or of the field device. Accordingly, Johnson does not anticipate claims 6 and 16 for the additional reason that Johnson does not teach or suggest “the first computing device is configured to, in response to execution of the first software application and the state, selectively initiating execution of a second software application by the second computing device,” as recited.

Claim 10 additionally recites, “wherein the first computing device is for coordinating a communication of information between the software application and the software object, even when the software object is executed by the second computing device.” Claim 20 contains similar language. The Examiner points to controller 60 and field device 64 of Figure 2. The Examiner appears to be arbitrarily combining separate components of Johnson in an attempt to show that Johnson teaches the claimed first computing device. While the “controllers” of Johnson may control field devices, there is no suggestion that any of these controllers are the same device (*i.e.* the intelligent actuator) that the Examiner has identified as the first computing device. For example, there is no indication that one of these “controllers” selectively initiates

execution of *a software object* by itself or another device based on state information of the controller or the other device. Thus, Johnson does not anticipate claims 10 and 20 for the additional reason that Johnson does not teach or suggest a first computing device “coordinating a communication of information between the software application and the software object, even when the software object is executed by the second computing device,” as recited.

New claims 36-47 depend from their respective independent claims 1, 7, 11 and 17, and are thus allowable at least by virtue of their dependencies. New claims 48-49 are allowable for reasons similar to those discussed above with respect to claim 1. New claim 50 is allowable for reasons similar to those discussed above with respect to claim 7.

Therefore, for these reasons and others, claims 1-20 and 36-50 are not anticipated or rendered obvious by Johnson. In the event the Examiner disagrees or finds minor informalities, Applicant respectfully requests a telephone interview to discuss the Examiner’s issues and to expeditiously resolve prosecution of this application. Accompanying this Amendment is a Request for Telephone Interview in the event the Examiner does not agree that the claims are allowable over the cited references.

In closing, Applicant respectfully requests the Examiner to withdraw the finality of the Office Action, enter these amendments, and to reconsider this application and its early allowance. The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 09/873,019
Reply to Office Action dated May 31, 2005

Respectfully submitted,

SEED Intellectual Property Law Group PLLC

A handwritten signature in black ink, appearing to read 'Timothy L. Böller', is written over a horizontal line.

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TLB:rg

Enclosure:

Postcard

Applicant Initiated Interview Request Form

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